Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B04
PLR-143504-06

Date:
February 13, 2007

<u>Legend</u>

Parent =

Subsidiary =

Country X =

State A =

Year X =

Dear :

This letter is in response to a letter dated September 5, 2006, submitted on your behalf by your authorized representatives, requesting a ruling regarding the application of section 367(e)(2) of the Internal Revenue Code with respect to a proposed transaction. Additional information was submitted in a letter dated November 9, 2006.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Facts

Parent is a Country X corporation engaged in the banking business worldwide. Parent conducts the banking business within the United States through a State A branch. Parent owns all of the stock of Subsidiary. Subsidiary is a State A corporation engaged in the securities brokerage and investment banking business. Taxpayers engaged in the banking business are sometimes engaged in the securities brokerage and investment banking business. Parent acquired all of the stock of Subsidiary several years ago in Year X from an unrelated person. At the time of the acquisition of Subsidiary, Subsidiary had no net operating loss carryovers. However, Subsidiary has had a net operating loss in most years since it was acquired by Parent. Subsidiary has no accumulated earnings and profits. Parent has generated positive taxable income from its conduct of the banking business in the United States in each taxable year since it acquired Subsidiary.

Parent plans to convert Subsidiary under State A law into a limited liability company having Parent as its sole member. The conversion is intended to qualify as a complete liquidation of Subsidiary into Parent under section 332 of the Code. As a result of the conversion, the taxable income or loss of Subsidiary will be included with the taxable income or loss of Parent's State A branch on Parent's income tax return. Parent intends to continue to operate Subsidiary's trade or business immediately after and at all times subsequent to the liquidation of Subsidiary, and such business will continue at all times to constitute a trade or business of Parent within the United States.

Representations

The taxpayer has provided the following representations with regard to this request for a private letter ruling:

(a) Following the conversion of Subsidiary into a State A limited liability company, Subsidiary will be disregarded as an entity separate from its owner for federal tax purposes under Treas. Reg. § 301.7701-3(b)(1)(ii).

(b) The conversion of Subsidiary into a disregarded entity will constitute a complete liquidation of Subsidiary into Parent under section 332 of the Code for federal income tax purposes.

(c) Immediately before the liquidation of Subsidiary into Parent, Parent will be the owner of at least 80 percent of the combined voting power of all classes of stock of Subsidiary and the owner of at least 80 percent of the total value of all classes of stock of Subsidiary.

(d) The property of Subsidiary that is distributed to Parent in liquidation will have been used by Subsidiary in the conduct of a United States trade or business, and Parent will use this property in the conduct of a United States trade or business immediately after the date of the liquidation and for ten years thereafter.

(e) Subsidiary will attach the statement described in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C) to its U.S. income tax return for the taxable year that includes the date of the liquidation. This statement will be prepared by Subsidiary and signed under penalties of perjury by an authorized officer of Subsidiary and by an authorized officer of Parent.

(f) Parent will attach a copy of the property description contained in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C)(2) to its U.S. income tax return for the taxable year that includes the date of the liquidation.

(g) Subsidiary will recognize gain with respect to the distribution to Parent of intangibles described in section 936(h)(3)(B) of the Code.

(h) The purpose for the conversion of Subsidiary into a disregarded entity is to consolidate its taxable income or loss with the taxable income or loss of Parent's State A branch.

(i) Any net operating loss of Subsidiary at the time of the liquidation was incurred by Subsidiary after Subsidiary was acquired by Parent.

Analysis

Section 337(a) of the Code generally provides that a liquidating corporation does not recognize gain or loss on the distribution of any property to an 80 percent distributee (as defined in section 337(c) of the Code) in a complete liquidation to which section 332 of the Code applies.

Section 367(e)(2) of the Code provides that, in the case of any liquidation to which section 332 of the Code applies, except as provided in regulations, sections 337(a) and (b)(1) of the Code shall not apply where the 80 percent distributee is a foreign corporation. Therefore, absent an exception in the regulations under section 367(e)(2) of the Code, a domestic corporation must recognize gain or loss on a liquidating distribution to an 80 percent foreign distributee under section 332 of the Code.

If certain requirements are satisfied, the regulations under section 367(e)(2) of the Code provide a nonrecognition exception to this general rule for distributions of property used in a U.S. trade or business. Treas. Reg. § 1.367(e)-2(b)(2)(i). To qualify for this exception, the foreign distributee corporation, immediately after the distribution and for ten years thereafter, must use the distributed property in the conduct of a trade or business within the United States. In addition, the domestic liquidating corporation must attach a statement described in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C) to its U.S. income tax returns for the taxable years that include the distributions in liquidation. Finally, the foreign distributee corporation must attach a copy of the property description contained in Treas. Reg. § 1.367(e)-2(b)(2)(i)(C)(2) to its U.S. income tax returns for the taxable years that include the distributions in liquidation.

However, this nonrecognition exception is subject to a general anti-abuse rule. This rule provides that the Commissioner may require the domestic liquidating corporation to recognize gain on a distribution in liquidation (or treat the liquidating corporation as if it had recognized a loss on a distribution in liquidation) if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together. Treas. Reg. § 1.367(e)-2(d).

Rulings

Based solely on the information and representations submitted in the taxpayer's ruling request, we rule as follows:

(1) Subsidiary will not recognize gain on the distribution of its assets in liquidation to Parent, except with respect to gain attributable to intangibles described in section 936(h)(3)(B) of the Code. Section 367(e)(2) and Treas. Reg. § 1.367(e)-2(b)(2)(i).

(2) Any net operating losses of Subsidiary that, pursuant to the provisions of section 381 of the Code and the regulations thereunder, are carried over to Parent will be allowed as deductions against the effectively connected income of Parent's U.S. branch.

Caveats

No opinion is expressed about the federal tax treatment of the proposed transaction under other provisions of the Code or Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above ruling. Specifically, no opinion is expressed regarding the following:

1. To the extent not otherwise specifically ruled upon above, any other consequence under section 367 of the Code of any transaction in this letter ruling.
2. Whether the conversion of Subsidiary into a disregarded entity for federal tax purposes qualifies under section 332 of the Code.

3. The determination of the income and losses of Subsidiary, including the validity of any net operating loss of Subsidiary.
4. Whether any net operating loss of Subsidiary that is carried over to Parent may be carried forward to future years if the business that is treated as liquidated by Subsidiary ceases to be treated as a trade or business within the United States within ten years of the liquidation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Charles P. Besecky, Chief, Branch 4,
Office of the Associate Chief Counsel (International)